

**Statement of Robert J. Spagnoletti
Attorney General**

before the

**Committee of the Whole
Linda W. Cropp, Chairman**

on

**PR 15-1184, the “Office of the Attorney General for the District of
Columbia Legal Service Non-Union Employees Compensation
Changes Approval Resolution of 2004”**

**PR 15-1195, the “Compensation Agreement Between the District
of Columbia and Compensation Unit 33
Approval Resolution of 2004”**

and

**PR 15-1196, the “Office of the Attorney General Legal Service
Managers Compensation System Establishment Rulemaking
Approval Resolution and Compensation System Changes
Approval Resolution of 2004”**



**Office of the Attorney General for the
District of Columbia**

December 2, 2004

Good afternoon, Chairman Cropp, members of the Council of the District of Columbia, and guests. I am Robert Spagnoletti, the Attorney General for the District of Columbia. I am pleased to appear before you this afternoon to discuss changes to the compensation system and salary schedule for three groups of Legal Service Series 905 attorneys who work in the Office of the Attorney General. These are: (1) line attorneys who are in the collective bargaining unit represented by Local 1403 of the American Federation of Government Employees (“AFGE Local 1403”); (2) line attorneys who are not in that bargaining unit; and (3) attorney managers, including those in the Senior Executive Attorney Service (“SEAS”) as well as non-SEAS attorney managers.

Before discussing the specifics of the resolutions, I would like to take a moment and remind the Council and those present here today of the significant contributions the men and women of the Office of the Attorney General make to the District of Columbia every day. In a city full of lawyers, you will find no law office – private or government – with a more talented, more dedicated, more diligent, or more overworked, staff. We are responsible for conducting all of the “law business” of the District. We handle all of the matters that would normally fall to the city attorneys, county attorneys, and state attorneys general. With over 300 mandatory and discretionary duties the OAG handles more than 20,000 legal matters each year. Indeed, even a partial list of our responsibilities demonstrates that the city’s legal team is indispensable to its effective operation. Each year OAG lawyers:

- represent the District in virtually all of its civil litigation, defending the city’s coffers and protecting the city’s agencies in hundreds of lawsuits;
- prosecute over 10,000 criminal cases and 3,000 juvenile justice cases;
- enforce hundreds of civil infractions, recovering millions of dollars for the District;
- work with thousands of families who are in the court system because of domestic violence, child protection, or mental health matters;
- review and draft legislation, issue legal opinions, and provide legal advice to all three branches of government;
- draft and review hundreds of contracts, agreements, commission orders, and other transactions;
- oversee the enforcement of nearly 100,000 child support matters on behalf of the District’s children; and
- handle all of the appeals on behalf of the District in all of the appellate courts up to and including the Supreme Court of the United States.

There is no other state Attorney General’s office with this volume and variety of legal work. I am proud to work with some of the finest lawyers in the city, who have for many years handled these critically important matters with little recognition and comparatively low pay. The three resolutions that are before you here today are an important step in creating a fair compensation scheme that will encourage talented lawyers to remain in government service on behalf of the District of Columbia.

The three resolutions before the Council address the three groups of attorneys working within the OAG.

I. OAG Line Attorneys in the Collective Bargaining Unit

The Office of Labor Relations and Collective Bargaining (“OLRCB”) and the leadership of AFGE Local 1403 have already addressed the history of the pending legislative proposal for the approximately 173 OAG attorneys who are in the collective bargaining unit. That history includes: the negotiations between the OLRCB, on behalf of the Mayor and OAG, and AFGE Local 1403, which led to impasse over compensation; the subsequent arbitration award, which cited the requirement of the Legal Service Act for pay parity with federal attorneys in finding in favor of AFGE Local 1403’s last best offer; and subsequent negotiations that led to the Memorandum of Agreement (“MOA”) attached to the collective bargaining agreement, the compensation provisions of which are now pending before this committee.

The pay increases contained in the collective bargaining agreement and the MOA have been a long time in coming. As you probably know, as codified at D.C. Official Code § 1-608.58 (2001), the Legal Service Act requires annual Executive Branch reviews to fix the compensation of Legal Service attorneys who are not SEAS attorneys so that it is competitive with that provided by the federal government’s General Schedule (“GS”) for attorneys in the Washington metropolitan area having comparable duties, qualifications, and experience. The same provision contains a similar requirement for the compensation of Legal Service SEAS attorneys, stating that their pay shall be competitive with that provided by the federal government Senior Executive Service Salary Table for attorneys in the Washington metropolitan area. The purpose of these requirements was and is to attract the finest possible legal talent to the District government and to stem the severe hemorrhaging we had experienced of the best and brightest lawyers out of the District government – often to the federal government, which competes with the District for the same limited pool of highly gifted lawyers interested in public service.

However, aside from a relatively small – or 4% – increase limited to Legal Service attorneys at DS-14 and below that the Council approved in October 2001, Legal Service attorneys have received no pay increase whatsoever since the creation of the Legal Service in early 1999-- almost six years ago. As a result, Legal Service attorneys have faced an ever-widening gap with attorneys in the federal government. According to a salary study by a consultant, American Economics Group, Inc., which OAG commissioned in October 2003, the pay gap at that time had ballooned to more than 15% for entry level line attorneys and more than 21% for senior level line attorneys in the Legal Service.

The arbitrator’s award and the resulting compensation provisions before you address the huge disparity. If approved by the Council, this agreement will help OAG achieve the major goals of the Legal Service Act: to retain the best attorneys in the District government and to attract additional outstanding attorneys to fill the government’s legal vacancies. The agreement will also rectify the inequity of little or no cost-of-living

adjustments in the line attorney ranks of the Legal Service during the previous six-year period.

The highlights of the wage provisions of the collective bargaining agreement and of the MOA are:

FY 2002:

- Bargaining unit attorneys at Grade DS-14 and below who were employed as of September 21, 2002, and are still employed on the effective date of the Collective Bargaining Agreement (“CBA”) will receive a \$1,600 bonus from the \$353,000 amount that the Council and Congress earmarked for extra Legal Service compensation in the FY 2002 Supplemental Appropriations Act.
- Bargaining unit attorneys at Grade DS-15 and above who were employed as of September 21, 2002, and are still employed on the effective date of the CBA will receive a pro-rata share of the remainder of the funds from the FY 2002 Supplemental Appropriations Act, i.e., what remains of the \$82,000 previously allocated as a performance bonus to employees DS-15 and above and partially distributed to DS-15 employees and above who are in management positions.

FY 2003: There will be no changes to salaries for FY 2003.

FY 2004:

- On April 1, 2004, all bargaining unit attorneys will convert to the existing A33 Pay Schedule for the Legal Service, which the Council adopted in October 2001, and will receive a 5% increase above that schedule for all grades and steps.
- On July 1, 2004, DS-15 bargaining unit attorneys and above will receive an additional 4% increase over A33 salaries at all grades and steps. This will not apply to attorney managers at DS-15 and above who became managers before July 1, 2004.
- On October 1, 2004, the A33 Pay Schedule will convert to the federal GS Pay Schedule as it existed on January 1, 2003, including locality pay. The new Legal Service pay schedule for members of the Bargaining Unit will be renamed the “LS Pay Schedule.”
- For the evaluation period ending August 31, 2004, those bargaining unit attorneys who received an “Exceeds Expectations” rating will receive a 2% bonus.

I strongly urge the Council to give this collective bargaining agreement its enthusiastic approval. I note that the agreement and the MOA provide for an additional 4.5% increase in compensation for Bargaining Unit employees effective October 1, 2005, and a further 4.5% increase for these employees effective October 1, 2006. Consistent

with the pay parity provisions of the Legal Service Act, I expect the Mayor and OAG to seek future Council approval for the same wage increases for non-bargaining unit attorneys and for attorney managers under the new LX Pay Schedule.

The agreement and the MOA are specific to OAG, given that union-eligible Legal Service line attorneys in other agencies are still in the process of organizing and have not yet elected an exclusive bargaining representative. Therefore, any change in their compensation must await the completion of the election process that is currently pending before the Public Employee Relations Board.

I note one minor technical error that needs to be corrected in the proposed resolution. In section 2(a) of the resolution, on the third through sixth lines, the text should be corrected to read: “the Council of the District of Columbia approves the compensation settlement agreement negotiated through collective bargaining between the Government of the District of Columbia and the collective bargaining representatives of Compensation Unit 33, including the wage provisions.” While the intent of the language on these lines is clear as written, the language itself is somewhat less so.

II. OAG Line Attorneys Not in the Collective Bargaining Unit

There are approximately 23 attorneys in OAG who by law are excluded from the bargaining unit due to the nature of work they perform. These attorneys are confidential employees and/or attorneys who work on personnel matters. Because it would be unfair to treat this small group of attorneys differently than their OAG bargaining unit attorney counterparts, the Mayor has determined that they should receive the same compensation, including both base pay and bonuses, as the attorneys who are covered by the collective bargaining agreement. I have already described the compensation provisions of the CBA and the MOA for attorneys in the OAG who are covered by collective bargaining and so need not repeat them here.

I strongly urge the Council to approve the proposed resolution concerning the pay for these attorneys. The resolution is specific to OAG, since eligible Legal Service line attorneys in other agencies are still in the process of deciding whether to unionize, so that raising the pay of their union-ineligible line attorney colleagues could be viewed as an unfair labor practice designed to discourage unionization.

I note two technical errors in the resolution as submitted that should be corrected. The title, “Office of the Attorney General for the District of Columbia Legal Service Non-Union Employees Compensation System Changes Approval Resolution of 2004,” should be revised to substitute the phrase, “Non-Collective Bargaining Unit,” for the phrase, “Non-Union.” This is because the true distinction between the first resolution I discussed earlier and this one is not between the line attorneys who are in the union and those who are not. Indeed, an employee covered by the pay adjustment that would be authorized by the first resolution can be in the Bargaining Unit but not in the Union. The real distinction between the two proposed resolutions is between the line attorneys who are members of the Bargaining Unit and those who are not. The change I recommend

would make that clear. Second, the reference in section 9 to “the newly established Pay Schedule ‘A35’” should instead be to “the newly established Pay Schedule ‘A33’,” which is the same as the new schedule for OAG attorneys in the collective bargaining unit.

III. OAG Attorney Managers

Under the third proposed resolution, effective October 1, 2004, all OAG attorney managers would be compensated based upon a new pay schedule, the LX Pay Schedule. In addition, the third proposed resolution would approve a change in the rules governing compensation to allow the use of this new schedule, which contains no steps and would afford me greater flexibility in setting the pay of attorney managers. The OAG was pleased to work in collaboration with DCOP to develop this new and innovative compensation structure.

The new LX Pay Schedule is divided into 3 pay bands. Each band has a minimum, midpoint and maximum range, and each band has a 50% salary range spread that is common to other District government salary schedules being proposed by the Mayor for certain executive level positions. Progression along each band would be based upon performance, not steps and grades.

In OAG, there are 44 attorney manager positions that would be compensated based upon the LX Pay Schedule. Attorney managers with the title Section Chief and Assistant Section Chief would be placed on the lowest pay band. Deputy Attorneys General and Assistant Deputy Attorneys General, who are also in the Senior Executive Attorney Service (“SEAS”), would be placed in the middle pay band. The Chief Deputy Attorney General, also a SEAS appointee, would be paid pursuant to the highest pay band on the LX Schedule. It would be within the Attorney General’s discretion to designate the appropriate salary for the attorney managers within each pay band. The criteria for determining salary would include, but not be limited to, the number of employees supervised, the complexity of duties and responsibilities, experience, skill, and job performance.

The LX Pay Schedule was created to compensate OAG attorney managers at levels comparable to the levels at which attorneys in the federal Senior Executive Service are compensated – as required by the Legal Service Act – and to provide a progressive and flexible system for pay administration. Indeed, the OAG commissioned a compensation study from the American Economics Group, Inc., in October of 2004 concerning the pay gap between Legal Service attorney managers and federal Senior Executive Service attorneys in the Washington metropolitan area with comparable duties, qualifications, and experience. This study concluded that OAG attorney managers’ salaries lag more than 26% behind their federal counterparts. Passage of the LX Pay Schedule will greatly assist in OAG’s ability to hire and retain highly talented attorney managers to help me run the District’s law firm. As I noted earlier, there has been no pay raise for any of the attorney manager positions at OAG during the last six years. Therefore, I strongly recommend that the Council approve the proposed salary schedule and compensation rule change for these employees.

I have served as Corporation Counsel, and now Attorney General, for a year and a half. During my entire tenure, the collective bargaining agreement and the issue of compensation have occupied an enormous amount of time and effort by OAG's management, the bargaining unit, and OLRCB. With the approval of these pay resolutions and the creation of a fairer compensation scheme, we will be free to focus our entire energy on the city's legal business – which is as it should be. The District is fortunate to be represented by a legal team with tremendous skill and dedication. They deserve nothing less than fair pay for their outstanding work.

Thank you for your time. I will now be happy to answer any questions.